

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,	)	
	)	
v.	)	I.D. Nos. 0012011246
	)	0304014538
TERVAUGHN STURGIS,	)	
	)	
Defendant.	)	

**ORDER**

On this 7th day of January, 2020, upon consideration of Defendant Tervaughn Sturgis’ (“Defendant”) Motion pursuant to “House Bill #5” (the “Motion”),<sup>1</sup> the recent opinion in *State v. Thomas*,<sup>2</sup> the sentence imposed upon Defendant, and the record in this case, it appears to the Court that:

1. On July 31, 2003, in case number 0012011246, Defendant was sentenced for violating the terms of his probation to two years at Level V, followed by decreasing levels of probation.<sup>3</sup>

2. On November 4, 2003, in case number 0304014538, Defendant was sentenced on one count of Robbery in the First Degree to 20 years at Level V, followed by decreasing levels of probation.<sup>4</sup>

3. On October 2, 2019, Defendant filed this Motion pursuant to “House Bill

---

<sup>1</sup> D.I. 22 in Case Number 0012011246; D.I. 60 in Case Number 0304014538.

<sup>2</sup> 2019 WL 5704287 (Del. Super. 2019).

<sup>3</sup> D.I. 14.

<sup>4</sup> D.I. 29.

#5” and requests that the Court modify his sentences to run concurrently. “House Bill #5” refers to recent legislation by the Delaware General Assembly that modified 11 *Del.C.* § 3901(d) (“§3901(d)”) to allow judges to impose concurrent periods of incarceration at sentencing.<sup>5</sup>

4. The Motion does not specifically reference Delaware Superior Court Criminal Rule 35(b) (“Rule 35(b)”). Defendant, however, seeks to modify his sentences from running consecutively to running concurrently. Because Rule 35(b) provides the only available procedure for an inmate to modify his sentence, the Court will treat Defendant’s Motion as a motion for sentence reduction pursuant to Rule 35(b).<sup>6</sup>

5. Rule 35(b) motions must be filed within 90 days after the imposition of the movant’s sentence.<sup>7</sup> Motions filed after 90 days will only be considered in “extraordinary circumstances”.<sup>8</sup> In addition, Rule 35(b) does not allow movants to file “repetitive requests for reduction of sentence.”

6. Defendant’s Motion was filed beyond the 90-day limit to challenge his sentences that were imposed in 2003. Defendant does not allege, and the Court

---

<sup>5</sup> See Del. H.B. 5 § 1, 150th Gen. Assem., 82 Del. Laws ch. 66, § 1 (2019) (amending Del. Code Ann. tit. 11, § 3901(d)).

<sup>6</sup> *State v. Thomas*, 2019 WL 5704287, 2 (Del. Super. 2019) (“[t]here is no separate procedure, other than that which is provided under Superior Court Criminal Rule 35, to reduce or modify a sentence”) (internal citations omitted).

<sup>7</sup> Rule 35(b).

<sup>8</sup> *Id.*

does not find, that extraordinary circumstances exist to warrant consideration of Defendant's untimely Motion.<sup>9</sup> Therefore, Defendant's Motion is time-barred from consideration pursuant to Rule 35(b).

7. Additionally, Defendant has previously sought relief pursuant to Rule 35 on six separate occasions in these two cases.<sup>10</sup> Therefore, the Court finds that the instant Motion is repetitive and barred from consideration pursuant to Rule 35(b).

8. Rule 35(a) is not applicable here because Defendant does not raise any challenges to the legality of his sentence.<sup>11</sup> Nevertheless, the Court finds that Defendant's sentence is legal. The version of §3901(d) that existed when Defendant was sentenced in 2003 stated that "[n]o sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant."<sup>12</sup> Therefore, in 2003, the two sentences of confinement were required to be imposed consecutively and thereby total 22 years of Level V time.

9. Finally, the 2019 amendment to §3901(d) does not affect the legality or

---

<sup>9</sup> *State v. Thomas*, 2019 WL 5704287 at 3 ("The term 'extraordinary circumstances' is generally defined as '[a] highly unusual set of facts that are not commonly associated with a particular thing or event'" (internal citations omitted)).

<sup>10</sup> *State v. Sturgis*, Del. Super., ID No. 0012011246, Medinilla, J. (June 27, 2019) (ORDER) (holding that Defendant's Rule 35 motion was repetitive because "Defendant has previously sought relief on five separate occasions").


<sup>11</sup> Super. Ct. Crim. R. 35(a) ("Correction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence").

<sup>12</sup> *State v. Thomas*, 2019 WL 5704287, 4 (Del. Super. 2019).

calculation of Defendant's 2003 sentence. Delaware courts have consistently held that amendments to §3901(d) cannot be applied retroactively to sentences imposed before the passage of the amendment.<sup>13</sup>

**IT IS HEREBY ORDERED** that Defendant's Motion for Reduction of Sentence is **SUMMARILY DISMISSED**.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Sheldon K. Rennie, Judge

Original to Prothonotary

Cc: Tervaughn Sturgis (SBI#00275411), JTVCC, Smyrna, DE  
Department of Justice, Wilmington, DE

---

<sup>13</sup> *Id.* ("But just as this Court and our Supreme Court consistently held when examining those earlier 2014 changes to § 3901(d), these 2019 amendments cannot be applied retroactively").